

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

HMS HOST

Employer

and

Case 12-RC-8948

**BAKERY, CONFECTIONERY,
TOBACCO WORKERS & GRAIN
MILLERS, LOCAL NO.103, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, HMS Host, is a food and beverage concessionaire at the Orlando International Airport, located in Orlando, Florida. The Employer operates a total of 19 restaurants and other concessions selling branded and non-branded concepts products, at Orlando International Airport (OIA), including Big Apple Bagel (1), Burger King (3), Cinnabon (2), Pizza Hut (1), TCBY (2), Mrs. Fields (1), Nathan's (2), Stinger Ray's (1), Chili's (1), Starbucks (2), Shipyard (1), Fresh Attractions (1), and Patio Bar (1). The Employer employs approximately 480 hourly employees at OIA.¹ These include cooks, servers, and bartenders who work at the full service restaurants, Shipyard, Stinger Ray's and Chili's, and at the Patio Bar; crew members who work at the other concessions, cashiers and utility employees who work at both the restaurants and other concessions (the restaurants and other concessions are sometimes collectively referred to herein as the

¹ The Employer's senior human resources manager testified that the Employer employs about 480 hourly employees at OIA. She also estimated totals for each hourly job classification as follows: 25 cooks, 150 servers, 10 bartenders, 300 crew members, 40 cashiers 45 utility employees, 5 maintenance employees, 4 helpers and 13 or 14 runners, which would be a total of approximately 592 or 593 hourly paid employees.

concessions), maintenance employees, and runners and helpers who are assigned to the commissary operated by the Employer at OIA, where it employs approximately 11 to 15 runners and 3 to 8 helpers.²

On July 11, 2003, the Petitioner, Bakery, Confectionery, Tobacco Workers & Grain Millers, Local No. 103, AFL-CIO, filed a petition with the National Labor Relations Board, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of full-time and regular part-time helpers and runners in the commissary at the Orlando International Airport.³ On July 28, 2003, a hearing officer of the Board held a hearing and the Employer and the Union filed briefs with me.

The issue before me is whether the full-time and regular part-time helpers and runners who are employed in the commissary share a community of interest distinct from the Employer's employees who are assigned to the 19 concessions. The Employer contends that the petitioned-for unit is not an appropriate unit because there is not a distinct community of interest between its commissary employees and its concession employees employed at OIA.

I have considered the evidence and the arguments presented by the parties. As discussed below, I have concluded that the unit sought by the Petitioner is not an appropriate unit. The Petitioner does not wish to proceed to an election in an alternate unit. Accordingly, I have dismissed the petition.

² There are varying estimates of the numbers of commissary employees, which differ from the above-cited testimony of the senior human resources manager, who estimated that there are 3 to 4 helpers and 13 to 14 runners. The commissary manager estimated that there are 6 helpers and 15 runners, and that 2 of the runners are only coded as runners for payroll purposes, but work as helpers. A commissary worker testified that there are 19 commissary employees, plus the commissary kitchen shift supervisor. There are 20 employees, including 8 helpers, 11 runners, and the kitchen shift supervisor, listed on the commissary schedules for the week of June 13, 2003.

³ The unit was amended by the Petitioner at the hearing.

I will first present an overview of the facts. Then, I will analyze the facts and set forth the reasons supporting my conclusions.

FACTS

The Employer's commissary is located on the first floor of the airport's main terminal, the maintenance department is located on the second floor, the food court, which includes Big Apple Bagel, Burger King, Cinnabon, Pizza Hut, TCBY, Mrs. Fields, Nathan's and Stinger Ray's, is located on the third floor, and Chili's is located on the fourth floor. The Employer also operates a Starbucks in the main terminal. At Airside 1 the Employer operates Burger King, Cinnabon and Patio Bar concessions. At Airside 4 the Employer operates Burger King, Nathan's, Fresh Attractions and Starbucks concessions.

In the commissary there are double doors with access to the loading dock. Once a person enters the commissary through the double doors there are two walk-in coolers, a walk-in freezer, and a dry storage area. Beyond those areas are the preparation or kitchen area and a separate room within the preparation area where employees assigned to the Pizza Hut concession prepare Pizza Hut products, all within the commissary. There is also an area adjacent to, and apparently a part of, the main commissary which is referred to as the "old commissary." The "old commissary" contains one walk-in freezer and two walk-in coolers used by the Burger King, Chili's, Nathan's, Pizza Hut, TCBY, and Cinnabon concessions, and a small storage area approximately 12 x 3 feet long which is used by commissary employees.

At OIA, the Employer employs a general manager, an operations manager, nine store managers, twenty-four assistant managers, one commissary manager, several shift supervisors, a controller, and a human resources manager.

The commissary manager reports to the general manager. She is responsible for determining the commissary employees' work assignments. She has the authority to send commissary employees to work in the concessions if there is a shortage of personnel in the concessions. The commissary manager also has the authority to discipline commissary employees, and she evaluates commissary employees on an annual basis. There is a shift supervisor who oversees the cooking functions in the commissary, and who is assisted by approximately 3 helpers in performing those functions.

The commissary manager oversees the ordering and the receiving of food and beverage products into the airport operations, and the delivery of those products to the 19 concessions, which are located in the main terminal and in the airside. She is also responsible for quality assurance and quality assurance training, both in the commissary and in the "stores" (the concessions).

The store managers and assistant store managers supervise most of the other hourly employees, including the crew members, utility employees, cooks, servers, and bartenders.

The senior field human resources manager does the interviewing and hiring of all hourly employees, and is responsible for personnel policy, and the administration of benefits, safety and legal compliance.

The Employer's operation includes a number of different job classifications. The runners assigned to the commissary receive food and beverage goods which are delivered to the loading dock by vendors, and lift, move, and stock the products in the commissary. They also deliver food and beverage goods to the concessions located throughout the airport. Whenever the runners deliver merchandise to the concessions, they hand a concession employee the requisition paperwork that shows what was delivered, but they do not check the merchandise at that point. According to one runner, his work from the point he reaches the concession to the point he leaves the concession takes no more than 5 minutes.

Commissary runners operate hand jacks, pallet jacks, lifts, and a truck to deliver merchandise to the concessions. Store managers submit requests for supplies to the commissary and orders are posted on a bulletin board in the commissary. When making deliveries to the concessions in the food court area on the third floor of the terminal, or to Chili's on the fourth floor of the terminal, the runners put the merchandise on a flat bed truck and travel by elevator from the commissary, which is located on the ground floor, to the particular concession. The runners then leave the merchandise at the door of that concession.

If the merchandise is being delivered to a concession in one of the airside, the runners load the merchandise on a truck, and drive to the airside. At airside 1, the runners leave the merchandise on pallets at the concession door. At airside 4, the commissary runners are required to break down the

pallets of merchandise they deliver, and store the merchandise in the concession. According to the commissary manager, they are assisted in this work at airside 4 by concession crew members, cooks, managers and supervisors. However, one runner testified that he performs this work by himself and places the merchandise on the concession floor, and that concession employees later store it on shelves in the concession.

The commissary manager testified that occasionally, commissary runners also help store merchandise in the Burger King and Chili's concessions. Runners are also responsible for cleaning and sanitizing their work area and equipment. They mop the commissary coolers a couple of days a week and pressure wash the commissary floor occasionally. They also help keep the loading dock area clean.

The helpers work in the commissary preparing various food products to be delivered to the concessions. They follow recipes and product directions, prepare appropriate pans for cooking, place and remove pans of food into and out of equipment to cook and store. Helpers operate a variety of kitchen utensils and equipment to weigh, measure, mix, wash, peel, cut, grind, stir, and knead food products for cooking, serving, and storing. They also receive inventory, move and lift food and beverage products and supplies. In addition helpers assigned to the commissary date, rotate, and check temperature of products. They are also responsible for cleaning and sanitizing their work stations and equipment.

Crew members work primarily at the fast food concessions. They take guest orders, serve food, and work in all food stations, e.g. broiler, grill, making sandwiches, preparing salads/vegetables, etc. Crew members are also responsible for keeping the dining area, tables and chairs clean and sanitized. They sweep and mop floors, empty trash receptacles, stock condiment bars, make coffee, fill ice machines, and wash dishes. In some concessions, e.g. Fresh Attractions, Big Apple Bagel and Nathan's, crew members also work as cashiers. In the Burger King concessions, some crew members are trained to become cashiers.

Utility employees mop floors, wash work tables, walls, windows, refrigerators and meat blocks at the concessions, and remove trash and garbage to designated areas. They also scrape food from dirty dishes, pots and pans, and wash dishes or put them in a dishwashing machine, and return clean serviceware and utensils to their proper places. Utility employees also are responsible for clearing and setting tables in the dining area, and transporting soiled serviceware and utensils to the concession kitchens for cleaning. They also receive inventory at the concessions, and move and lift food and beverage products and supplies. Depending on their work location, utility employees may also make coffee, fill ice and service the fountain drink machines. Utility employees assigned to the concessions located in the terminal (i.e. "landside" – the food court and Chili's) regularly take trash from those concessions to the back of the commissary where the trash is deposited.

Cashiers ring up sales in the concessions.

A number of crew members and other employees assigned to the fast food concessions are coded for payroll purposes to multiple concessions, and may be assigned to any of 4 or 5 fast food concessions.

There are two maintenance employees who are coded to the commissary for payroll purposes, but who perform maintenance duties under the supervision of the Employer's maintenance supervisor. These two employees are also known as the dispatcher and maintenance helper. The dispatcher receives calls from the concessions regarding repairs and schedules the repairs. The maintenance helper does non-technical maintenance repairs such as changing light bulbs, at all of the Employer's operations at OIA, as needed. The maintenance department office, as noted above, is located on the second floor of the terminal.

Cooks work in the full service restaurants, which are Chili's, Stinger Ray's and Shipyard. Cooks are responsible for the preparation of various food products. They follow recipes and product directions for preparing, seasoning, cooking, tasting, carving and serving soups, meats, vegetables, desserts and other food and beverage products. They measure and mix ingredients, wash, peel, cut and shred fruits and vegetables, and trim and cut meat, poultry and fish for culinary use. Cooks operate a variety of kitchen equipment. They also stock, date, rotate, and check the temperature of product; receive, move, and lift food and beverage products and supplies. Cooks also taste products, follow menus, estimate food requirements, check production and keep records in order to accurately plan production requirements and requisition supplies and equipment

as needed. They are responsible for cleaning and sanitizing their workstations and equipment.

The Employer posts job openings when a position becomes available and all employees can apply for transfer to another unit or department. There is some evidence of permanent transfers of concession employees to the commissary. A helper who has been working at the commissary for the past two years and seven months spent the previous three years working in Nathan's and Fresh Attractions doing food preparation work. She testified that her duties in the commissary are similar to her work in the concessions. A nine-year employee testified that after six months on the job he transferred from the Burger King concession to the commissary as a runner. Neither of these employees has performed concessions work since they transferred into the commissary.⁴

There is some evidence of day-to-day interchange between commissary employees and concessions employees, although such interchange is not frequent. Based on the needs of the business, at any time the Employer can ask a commissary employee to work an extra shift in another unit or concession. However, the Employer's senior field human resources manager testified that temporary transfers do not happen often. The commissary manager testified that when there are special visitors coming she may ask commissary employees to help in other units, and that when a concession needs more employees she

⁴ There is also a commissary supervisor who worked in the Pizza Hut concession as a cashier, and then in the cash room and accounting, before becoming a supervisor in the commissary. The record does not contain sufficient evidence to determine whether this individual is a supervisor within the meaning of Section 2(11) of the Act.

posts a memo in the commissary for employees who wish to work an extra shift after they finish their day's work in the commissary.⁵

The commissary manager testified that 3 commissary employees worked in a concession once during the past two months, but she could not specify the number of hours they worked on those occasions. A fourth commissary employee apparently worked in Pizza Hut and Chili's, but it is not clear from the record how long this employee worked at those concessions, or when this occurred, other than that it was not during this year. According to the commissary manager, none of the commissary employees worked in concessions jobs more than twice during the last year and a half.

In or around May 2003, a commissary employee was asked to clean tables at Chili's before the restaurant opened for business, and she also painted some walls and doors because there was a special visit from corporate and the Employer needed extra help to clean the restaurant. Another commissary employee, at some undetermined time, was asked by his supervisor to help concessions utility employees clean the food court area, and he performed that work for approximately an hour. The record also reflects that about a year ago a commissary runner worked for cleaning tables in the food court area on several occasions during a one or two month period, after clocking out of the commissary on those occasions.

There is no evidence that any concessions employees substitute for commissary employees on a temporary basis.

⁵ Although employees may be coded to work in as many as four or five different concessions, the commissary manager testified that she could not remember any commissary employees who had worked or were coded in other classifications during the last year.

As noted above, approximately three or four crew members assigned to the Pizza Hut concession prepare pizza, bread sticks, and salads in the commissary on a daily basis from around 6:00 a.m. to anywhere from 3:00 p.m. to 6:00 p.m. These employees report directly to the Pizza Hut store manager. Some of them spend most of their time working in the commissary preparing the product, and others start their day in the commissary and go to the Pizza Hut concession to work as cashiers after the concession opens for business. The Pizza Hut employees have a room within the commissary where they prepare food. Commissary employees rarely go into that room, and the Pizza Hut employees sometimes close the door to that room. However, according to the commissary manager, when the Pizza Hut is very busy, commissary helpers working in the commissary may cook bread sticks for Pizza Hut in an oven located in the commissary. It is not clear from the record how often this occurs. One helper testified that it was the commissary kitchen shift supervisor who performed this overflow Pizza Hut work.

Burger King, Pizza Hut, Cinnabon and Chili's have their own product storage area within the commissary, which employees refer to as the "old commissary." Within the old commissary Burger King and Chili's have their own separate freezers, and Pizza Hut, Cinnabon and TCBY share a third freezer. The Chili's freezer is always locked. Commissary employees never go into either the Burger King or the Chili's freezer. However, commissary runners store milk for Pizza Hut and Cinnabon in the cooler shared by those concessions which is

located in the old commissary, and go to that cooler to get milk to deliver to those concessions.

Burger King, Pizza Hut, and Chili's have crew members or utility employees designated as "delivery associates", and who, like the commissary runners, are also sometimes referred to as runners. The delivery associates pass through the commissary with their managers to the loading dock and receive merchandise directly from their vendors. These delivery associates are responsible for storing the merchandise in their respective freezers in the old commissary and for delivering the merchandise from the loading dock or from their freezers and cooler in the old commissary to the concessions to which they are assigned. Burger King and Chili's receive deliveries at least three times a week. There is one concession employee who is responsible for receiving merchandise for Nathan's, Cinnabon, Pizza Hut, and Mrs. Fields. These four concessions have a common store manager. Commissary employees see the delivery associates on the loading dock and at the old commissary, but apparently have little if any contact with them in connection with the performance of their duties. However, it appears that at least some of the commissary runners know the delivery associates and speak to them while at work with some degree of frequency. The commissary employees testified that they never go to the concessions' freezers in the old commissary. However, as noted above, they do store product in a small storage area within the old commissary, and store milk for Pizza Hut and Cinnabon in their shared cooler in the old commissary.

Most concession employees perform their duties at the concession to which they are assigned.

All of the Employer's hourly employees at OIA receive the same medical, dental, disability, life insurance, 401(k), vacation, sick leave and holiday benefits. They are all paid on the same bi-weekly basis. Additionally, all are covered by the same personnel policies and procedures, including the same attendance policy, grooming policy and progressive discipline policy. All employees receive a yearly performance appraisal by their manager.⁶ There is no break room provided by the Employer. Employees from both the concessions and the commissary go to the food court during their breaks. All employees have a 30-minute lunch break.

All of the concessions and the commissary are open seven days a week. Employees' hours of work vary depending on their jobs and departments. Some employees start working as early as 3:00 a.m. Concessions close at various hours, and as late as 11:00 p.m. Commissary runners start work at 5:00 a.m. Commissary helpers start work at 6:00 a.m. Commissary employees usually work until 1:00 p.m. or 2:00 p.m. Most of the employees are full-time employees working between 35 to 40 hours a week.

All employees are hourly paid and are paid time and a half for overtime work. Servers are paid \$2.36 an hour plus tips and bartenders are paid \$4.50 an hour plus tips. None of the other hourly employees are tipped. Helpers and crew

⁶ Managers may request input from other supervisors if an employee is known to work in more than one location.

members have the same starting pay⁷. The record does not reflect the starting wage rates for any other job classification. Wage increases are based on merit, as determined by the annual performance appraisal completed by the employee's manager. All employees, including commissary employees, receive daily a meal voucher valued at \$5.30 to purchase a meal in certain food concessions, and they may get free soda and coffee while at work.

Employees assigned to the non-branded concessions, i.e. Fresh Attractions, Nathan's, TCBY, Mrs. Fields, and Big Apple Bagel and commissary employees wear the same uniforms: black pants with a HMS Host logo golf-style shirt. Chili's, Burger King, Cinnabon, and Starbucks employees wear a similar type of shirt, but with a logo specific to their concession. Most employees wear black or dark pants, except Chili's employees who wear jeans. Cooks' uniforms vary depending on the concession where they work. Maintenance employees have a different uniform. Most employees use skid resistant shoes. All employees are required to have a name tag. The Employer provides the shirts, hats, name tags and a percentage of the cost of shoes to all employees.

Employees clock in and out in their "home units". Commissary employees have a time clock located in the commissary.

As noted above, all hourly employees are interviewed and hired by the Employer's senior field human resources manager. All employees undergo a background check, and attend a common orientation, including food safety and customer service training, regardless of their job classification. All new

⁷ The record does not reflect the starting wage rates for the helper and crew member classifications.

employees are placed on a 90-day probationary period. There is no formal education requirement for any of the employees. Technical maintenance employees are required to possess some state certification.

Cooks are required to have one to two years of fast paced cook experience. Helpers and utility employees are not required to have any type of experience. Crew members are not required to have any type of experience, but they are provided with company training. Bartenders are required to have previous bartender experience and must demonstrate proficiency before they are hired. Servers are required to have six months to one year of full-service restaurant experience. Runners must have previous warehousing experience or the ability to lift 50 pounds. Cashiers must have previous cashier experience and they are provided with company training.

ANALYSIS

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. Overnite Transportation, Co., 322 NLRB 723 (1996); Omni International Hotel of Detroit, 283 NLRB 475 (1987); and Ore-Ida Foods, 313 NLRB 1016 (1994), *affd.* 66 F.3d 328 (7th Cir. 1995). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit. The community of interest principles govern the appropriateness of a given unit. In analyzing whether employees in a petitioned-for unit share a community of interest separate and apart from those outside the unit, the Board considers community of interest factors such as employee skills and functions, degree of

functional integration, interchangeability and contact among employees, qualifications and work performed, common supervision, work sites, similarity in wages, hours, benefits and other terms and conditions of employment, and bargaining history. Kalamazoo Paper Box Corporation, 136 NLRB 134, (1962); Armco, Inc., 271 NLRB 350 (1984); Atlanta Hilton & Towers, 273 NLRB 87 (1984); J.C. Penney Co., 328 NLRB 766 (1999); Yuengling Brewing Co. of Tampa, 333 NLRB 892 (2001).

Here, there is no history of collective bargaining affecting any of the employees to provide guidance with respect to their unit placement.

Applying these principles to the facts in this case, I find that the petitioned-for unit of commissary runners and helpers does not possess a community of interest separate and distinct from the rest of the Employer's hourly employees.

The record shows that the commissary employees' work is highly integrated with that of the concession employees. The commissary employees' function is to prepare and deliver bulk supplies to concessions in order for the concession employees to be able to serve customers. "It is well established that the Board does not approve fractured units, i.e., combination of employees that are too narrow in scope or that have no rational basis." Seaboard Marine, 327 NLRB 556 (1999), citing Colorado National Bank of Denver, 204 NLRB 243 (1973).

In addition, the commissary helpers and runners share the same skills and functions with many of the concessions employees. Thus, commissary helpers perform similar functions to those performed by the crew members assigned to the concessions and to the cooks in the restaurants, and the commissary runners, like the concessions "delivery associates" are responsible for receiving, storing, and delivering products for the concessions. Both the commissary runners and helpers lack specialized skills that distinguish them from the employees in other job classifications. See Seaboard Marine, supra, Scolari's Warehouse Markets, 319 NLRB 153 (1995); Holiday Inn Southwest, 202 NLRB 781 (1973). In this regard, commissary helpers, like crew members, are not

required to have any type of experience in order to be hired, and both classifications have the same starting wage rate.

It is also significant that commissary runners have some regular contact with concessions employees when they bring supplies to the concessions on a daily basis. Moreover, commissary runners share the same general work area, i.e. the loading dock and "old commissary" on a regular basis with three delivery associates assigned to the concessions, and commissary helpers share the same general work area with the three or four Pizza Hut employees who prepare food in the commissary on a daily basis.

The centralized control over labor relations is yet another factor which supports the conclusion that the petitioned-for employees do not constitute an appropriate unit. All employees at the OIA are interviewed and hired centrally, undergo a background investigation, receive the same orientation, and are covered by the same centrally determined personnel policies and procedures, including disciplinary and wage and benefit policies.

Finally, the commissary employees receive the same or similar wages and the same benefits as the Employer's other hourly employees who work at OIA. For the above reasons, the commissary employees share a strong community of interest with the concessions employees.

In Hotel Services Group, 328 NLRB 116 (1999), the Board found that a group of licensed massage therapists did not possess a separate community of interest apart from the Employer's other licensed personnel, primarily based upon the fact that most of the employees performed similar work, the method of compensation was similar, and all employees received the same benefits. The Board further held that "a difference in supervision does not necessarily mandate excluding differently supervised employees." *Id. citing Texas Empire Pipe Line Co.*, 88 NLRB 631 (1950).

Although the commissary employees are in a separate department and are separately supervised from the other hourly employees, and day-to-day

interchange between commissary employees and other employees is infrequent, in view of the above factors, that evidence is insufficient to establish that commissary employees constitute a separate appropriate unit. These distinctions are offset by the highly integrated workforce, the similarity in job functions, and the comparable terms and conditions of employment. See Transerv Systems, 311 NLRB 766, (1993) (where the Board, reversing the Regional Director, found that a petitioned-for unit of bicycle messengers did not share a sufficiently distinct community of interest notwithstanding separate immediate supervision, and the relatively few numbers of transfers, where the employees at issue performed the same functions, there was a high degree of functional integration, frequent contact, and the employees shared similar terms and conditions of employment.).

The Petitioner cites various cases in support of its position that a separate unit of commissary department employees is appropriate. In MPC Restaurant Corp. v. NLRB, 83 LRRM 2769 (2d Cir. 1973), it was determined that a bargaining unit limited to a restaurant's kitchen employees was appropriate. Similarly, in Washington Palm, Inc., 314 NLRB 1122 (1994), the Board denied a request for review of a Regional Director's determination that a unit limited to a restaurant's nontipped kitchen employees was appropriate. See also Toffenetti Restaurant Co., 133 NLRB 640 (1961). However, although the commissary employees herein are essentially "back of the house" employees, they are not the only "back of the house" employees in the Employer's OIA operations. Thus, cooks, and certain utility employees and crew members perform "back of the

house” functions for the Employer which are highly similar to the functions performed by the commissary employees. In addition, like the commissary employees, all of the Employer’s employees other than bartenders and servers are nontipped. In summary, the facts in the instant case are distinguishable from the facts in the cases cited by the Petitioner.

For the above reasons, I find that the petitioned-for unit is not an appropriate unit for the purposes of collective bargaining.

Order

It is hereby ordered that the petition filed herein is dismissed.⁸

Dated at Tampa, Florida, this 25th day of August 2003.

Rochelle Kentov, Regional Director
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⁸ Under the provisions of Section 102.67 of the Board’s Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W. Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on September 8, 2003. The request may not be filed by facsimile.

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